

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 1542 - HB 1404**

March 30, 2021

**SUMMARY OF BILL:** Entitles a state employee who has been employed full-time with the state for at least 12 consecutive months, to the following benefits (in addition to currently available benefits):

1. Granted absence from work with pay for a period of time equal to four (4) workweeks after the birth of the employee's newborn child or adoption of a newly placed minor child six (6) years of age or younger by the employee upon the employee giving thirty-days' notice to the appropriate appointing authority. If the eligible employee learns of the birth or adoption less than thirty (30) days in advance, the employee must give the notice as soon as reasonably possible; and
2. Granted absence from work with pay for a period of time equal to one (1) workweek for a serious health condition of the employee, employee's spouse, employee's child, or employee's parent upon the employee giving thirty-days' notice and appropriate medical certification from a healthcare provider to the appropriate appointing authority. If the eligible employee learns of the need for leave based on a serious health condition less than thirty (30) days in advance, the employee must give the notice and medical certification as soon as reasonably possible.

Leave granted pursuant to the is legislation will not be counted against any sick, annual, or other accumulated leave balance; however, such leave must count against the employee's leave given pursuant to the federal Family and Medical Leave Act (FMLA) or state leave currently granted for adoption, pregnancy, childbirth, or nursing of an infant.

Prohibits such additional leave from being used more than once in one twelve-month period.

Requires the Department of Human Resources (DHR) to establish policies for implementing this section with regard to executive branch agencies. For non-executive branch agencies, the equivalent of the agency's human resources offices must establish such policies.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures - \$1,569,700/FY21-22 and Subsequent Years**

**Other Fiscal Impact - The state's additional fiscal liability is estimated to be \$14,669,210 for accumulated leave resulting from the proposed legislation but does not result in a direct annual budgetary impact. Currently, the agencies**

**included within the proposed legislation realize average payroll savings of \$265,409,165.**

Assumptions:

- According to the U.S. Department of Labor, 60 percent of all employees meet all criteria for coverage and eligibility under FMLA. Further, 13 percent of all employees reported taking leave for an FMLA qualifying reason in the previous 12 months. <https://www.dol.gov/whd/fmla/survey/>.
- Based on information provided by the Department of Human Resources (DHR), approximately 3,360 employees within executive branch agencies took some form of FMLA leave in FY18-19. Based on reports from non-executive branch employees, approximately 263 employees took some form of FMLA leave in FY18-19.

*Overall Liability to the State:*

- *The Family and Medical Leave Act in 2012: Final Report with data last revised April, 2014* indicates that approximately 75 percent of current employees have an unmet need for leave and of those approximately 46.1 percent could not afford to go on unpaid leave.
- It is assumed current employees who currently cannot afford to take FMLA due to unpaid leave or do not have accumulated leave for the full 12 weeks will be able to take leave as a result of the proposed legislation; therefore, there will be an increase in FMLA leave taken by employees.

Branch	Average Salary	FMLA FY2019	Increase FMLA due to Paid Leave	Total FMLA Employees
Executive Branch	\$ 76,233	3,360	7,500	10,860
Non-Executive	\$ 111,714	263	1,081	1,344
Totals		3,623	8,581	12,204

- Based on previous information from DHR, approximately 70 percent of FMLA leave is taken as leave with pay by using annual, sick and compensatory leave. The provisions of the bill will result in leave days being used at a later time or accumulating throughout the employee's tenure.
- Any accumulated annual or compensatory time leave at the time of an employee's termination from state government is paid out based on the employee's hourly rate at the time. While this will not result in a direct annual fiscal impact, it does create a fiscal liability for the state.

- For the leave taken in FY18-19, it is assumed this will result in approximately \$3,285,478 in additional liability each year  $\{[(3,360 \times (\$76,233/365) \times 6 \text{ days}) + (263 \times (\$111,714/365) \times 6 \text{ days})] \times 70\% \}$ .
- It is estimated the 8,581 employees who take FMLA as a result of the proposed legislation will accumulate approximately 6 days of leave (60 days FMLA x 10%) resulting in additional state liabilities of \$11,383,731  $[(7,500 \times (\$76,233/365) \times 6 \text{ days}) + (1,081 \times (\$111,714/365) \times 6 \text{ days})]$ .
- The total state liability for unused leave is estimated to be \$14,669,209  $(\$3,285,478 + \$11,383,731)$ . This amount will continue to grow as people are able to use paid FMLA leave rather than accumulated annual, sick, or compensatory time leave.
- Based on previous information provided by the Department of Finance and Administration, the state experiences payroll savings on average of \$265,409,165 annually for these departments and agencies.

Fiscal Year	Payroll Savings	
	Executive Branch	Non-Executive Branches
FY2014 - 2015	\$ 222,421,504	\$ 24,400,933
FY2015 - 2016	\$ 232,773,484	\$ 28,254,081
FY2016 - 2017	\$ 263,997,442	\$ 28,883,235
FY2017 - 2018	\$ 242,403,131	\$ 27,553,477
FY2018 - 2019	\$ 230,254,304	\$ 26,104,232
Average	\$ 238,369,973	\$ 27,039,192

*Annual Savings Unrealized:*

- Annual savings realized within executive branch agencies for employees going on leave without pay for FMLA events is estimated to be two percent of all payroll savings, or approximately \$4,767,399  $(\$238,369,973 \times 2.0\%)$ .
- Similarly, annual savings realized within the court and constitutional officer departments for employees going on leave without pay for FMLA events is estimated to be 4.5 percent of all payroll savings, or approximately \$1,216,764  $(\$27,039,192 \times 4.5\%)$ .
- It is assumed that this legislation could jeopardize approximately 25 percent of such savings.
- For purposes of this analysis, it is estimated total annual savings that will no longer be realized and will no longer be available for future expenditures will exceed \$1,496,050  $[(\$4,767,400 + \$1,216,800) \times 25\%]$  in FY20-21 and subsequent years.

*Additional Expenditures:*

- Based on previous information provided by the DHR, approximately six percent of FMLA leave employees result in hiring temporary employees or overtime being paid to current employees and each FMLA leave employee takes on average 23 days.

- With the proposed legislation resulting in an increase in employees taking FMLA and also the amount of time each employee will take, it is estimated temporary employee days and overtime pay will increase.
- Further, due to current employees no longer having to use accumulated annual, sick, or compensatory time leave to meet FMLA leave needs, it is reasonable to assume an overall increase in temporary and overtime employee days of approximately 10 percent. The total increase in temporary and overtime employee day expenditures is estimated to be \$73,609.

Branch	Current Temporary and Overtime employee days	Increased Temporary and Overtime Employee days	Average Daily Rate	Total Cost for Temporary Employees
Executive Branch	4,637	464	\$ 141	\$ 65,170
Non-Executive	363	36	\$ 233	\$ 8,438
Totals	5,000	500	\$ 373	\$ 73,609

- The total recurring increase in state expenditures for FY21-22 and subsequent years is estimated to be \$1,569,659 (\$1,496,050 + \$73,609).

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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